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KAPOLEI PROPERTY DEVELOPMENT, LLC

BEFORE THE LAND USE COMMISSION

OF THE STATE OF HAWAI'I

In the Matter of the Petition of KAPOLEI PROPERTY DEVELOPMENT, LLC To Amend the Agricultural Land Use District Boundaries into the Urban Land Use District for Approximately 344.519 Acres in Ewa District, Island of Oahu, Tax Map Key Nos. (1) 9-1-014:033 (por.), 034, 035 and (1) 9-1-015:020 (por.)	DOCKET NO. A06-763

KAPOLEI PROPERTY DEVELOPMENT, LLC'S
WRITTEN DIRECT TESTIMONY OF REGINALD E. DAVID

EXHIBIT "25"

WRITTEN DIRECT TESTIMONY OF
REGINALD E. DAVID

BACKGROUND QUESTIONS

1. ***Please state your name and business address for the record.***

Reginald E. David
P.O Box 1371
Kailua-Kona, Hawaii 96745

2. ***What is your current occupation?***

Consulting biologist, specializing in terrestrial vertebrate species.

3. ***How long have you been a terrestrial vertebrate biologist by profession?***

14 years.

4. ***Do you presently belong to any professional organizations or associations?***

Yes.

5. ***Could you please list them for us?***

- American Ornithologist's Union,
- Association of Field Ornithologists,
- Cooper's Ornithological Society,
- Wilson's Ornithological Society, and
- The Wildlife Society.

I also have served on, or am currently serving on the following professionally associated boards, committees and the like.

- US Fish & Wildlife & Department of Land and Natural Resources (DLNR), Newell's Shearwater Working Group.
- US Fish & Wildlife & DLNR, Hawaiian hoary bat Technical Working Group.
- State of Hawaii Department of Land and Natural Resources, Natural Areas Reserve Commission (NARS) Commissioner: 1999 – 2003.
- Hawaii Natural Heritage Program, Ornithological Advisory Committee.
- The Mauna Kea Management Board – Environmental Committee.
- US Fish & Wildlife Service, 'Alala Recovery Team Member: 1994 – Present.
- National Audubon Society: Board of Directors member: 1993-1996.
- Hawaii Audubon Society: Board of Directors member: 1989 - 1996, 1998.
- Hawaii Audubon Society: Treasurer 1998.

- Hawaii Audubon Society: President 1990-1994.
- US Fish & Wildlife & DLNR, Hawai'i Endangered Waterfowl Recovery Team Advisory Committee.

6. Did you provide a copy of your curriculum vitae for purposes of this hearing?

Yes.

7. Is Petitioner's Exhibit "26" a copy of your curriculum vitae?

Yes.

8. Do you specialize in a particular area in your field of work?

Yes, the censusing of birds, terrestrial mammals and bats, as well as regulatory issues regarding endangered avian and mammalian species in Hawaii and the Tropical Pacific.

9. Could you briefly describe your training and work experience as a terrestrial vertebrate biologist?

I started participating in bird surveys in the early 1980's, and participated as a volunteer conducting forest bird counts on all of the major Hawaiian Islands for the U.S. Fish and Wildlife Service ("USFWS") and the State of Hawaii Division of Forestry and Wildlife ("DOFAW"). After several years of working as a volunteer, I started training the next crop of biologists to conduct bird and bat surveys. I have trained biologists working for the USFWS, DOFAW, U.S. Army National Guard, U.S. Army, the Nature Conservancy of Hawaii, and for governmental agencies in Guam, Commonwealth of the Northern Marianas (CNMI) and the Republic of Belau to conduct avian and mammalian surveys over the intervening years.

Furthermore, I have conducted over 250 faunal surveys on all of the main Hawaiian Islands as well as on Midway, Nihoa, Necker and Kure Atolls. I am also experienced in the radar tracking of seabirds and bats as well as ultrasonic censusing of bats. I have authored over 20 peer reviewed papers, one book (Hawaii's Birds – published by the Hawaii Audubon Society) and over 200 technical reports on birds and mammals, for various state, and federal and commonwealth agencies, as well as private developers in Hawaii, the Tropical Pacific and Asia.

10. Where are you currently employed?

Rana Productions, Ltd.

11. How long have you been employed at Rana Productions, Ltd.?

14 years.

12. What is your title or position?

President.

13. Could you briefly describe what Rana Productions does?

We design and conduct avian and mammalian surveys, and prepare reports detailing those efforts and findings. Additionally, we prepare endangered species regulatory documentation and negotiate endangered species minimization and mitigation on behalf of private, state and federal entities with the USFWS, and DOFAW.

14. Could you briefly describe your duties and responsibilities?

All of the above.

15. How long have you been involved in performing terrestrial vertebrate surveys?

24 years.

16. Could you briefly describe the type of work you currently perform as a terrestrial vertebrate biologist?

I design and conduct avian and mammalian surveys, and prepare reports detailing those efforts and findings. Additionally, we prepare endangered species regulatory documentation and negotiate endangered species minimization and mitigation on behalf of private, state and federal entities with the USFWS, and DOFAW.

17. Could you briefly describe to us the types of projects in which you have performed terrestrial vertebrate surveys?

I have conducted faunal surveys for single lot owners of parcels of land of less than an acre, up to multi-year surveys of very large federal projects such as the 56-mile long Saddle Road Project on the Big Island. We have also prepared and/or worked on large management plans such as the Integrated Natural Resources Management Plan for Navy Lands Guam, and prepared long term monitoring and programs such as the DOFAW Save our Shearwaters Program ("SOS") on Kauai.

18. Do you possess specialized knowledge within the field of terrestrial vertebrate biology?

Yes.

19. In what areas?

The history and distribution of avian and mammalian species in Hawaii, and the state and federal regulatory processes associated with them.

20. Have you previously been qualified and/or testified as an expert witness in the field of terrestrial vertebrate biology?

Yes.

21. If yes, on approximately how many occasions have you been qualified to testify as an expert in the field of terrestrial vertebrate biology?

I have testified as an expert in the following matters:

- TSA Corporation Kaloko Development, LUC Docket No. A00-732.
- Saddle Road Improvement Project, Contested Case Hearing for a Conservation District Use Permit, BLNR, 2001.

In addition, my qualifications are used as an example of how to qualify an expert witness without an academic background in a workbook prepared by University of Hawaii, Richardson School of Law, Associate Professor, Casey Jarman titled, "Making Your Voice Count: A Citizen Guide to Contested Case Hearings, A workbook of the Environmental Law Program."

KAPOLEI HARBORSIDE CENTER DEVELOPMENT PROJECT

22. Are you familiar with the Kapolei area located in the 'Ewa District on the island of Oahu?

Yes.

23. Are you familiar with the terrestrial vertebrate species of the Kapolei area located in the 'Ewa District on the island of Oahu?

Yes. I have also surveyed portions of this project site as part of another survey conducted for the Hawaiian Electric Generating Station and Transmission Additions Project Site, in 2005, and several other locations within the same general area including a 2000 faunal survey for the Proposed Leeward Bikeway Project, a 2001 faunal survey for the HECO Fuel Pipeline, Barbers Point to Waiau

Project; a 2005 survey for the Proposed Interstate H-1 Addition and Modification of Highway Accesses, Pālailai Interchange and Makakilo Interchange Project; a 2006 survey of the botanical and faunal resources for the Makaīwa Hills Project Site; and a set of five surveys in 2006 for the proposed Ho'opili project in Kapolei.

24. How did you become involved in the Kapolei Harborside Center project ("Project")?

I was hired by Group 70 International to provide flora and fauna support for the proposed Project.

TERRESTRIAL VERTEBRATE RESOURCES

25. Did you conduct a biological survey and prepare a report about the Project?

Yes.

26. What did the survey consist of?

Audio and visual detection of avian and mammalian species.

27. Was the biological survey prepared by you or under your supervision?

The faunal portion of the survey was conducted by me, and the botanical survey was conducted under my supervision.

28. Is Petitioner's Exhibit "27" a true and correct copy of your survey report?

Yes.

29. Could you please summarize the scope of your survey?

A primary goal of the surveys was to determine if there were any Federal or State of Hawaii listed endangered, threatened, proposed, or candidate avian, mammalian or botanical resources on, or in the immediate vicinity of the proposed Project site.

30. Could you describe the methodology used to conduct your survey?

The faunal portion of the survey was conducted as follows:

Fourteen avian count stations were sited at approximately 300-meter intervals along linear transects running from north-to-south through the Project area. One six-minute point count was conducted at each station. Field observations were

made using Leitz 10 X 42 binoculars to sight birds and by listening for vocalizations. Counts took place between 7:30 a.m. and 10:30 a.m., the peak of daily bird activity. Time not spent conducting station counts was used to search the area for species and habitats not detected during count sessions.

The survey of mammals was limited to visual and auditory detection, coupled with visual observation of scat, tracks, and other animal signs. A running tally was kept of all vertebrate species observed and heard within the study area.

Additionally, a literature review was conducted of pertinent earlier surveys conducted in and around the subject property.

31. Is the methodology you employed consistent with standards accepted by the scientific community in your field?

Yes.

32. Based on your survey, what types of terrestrial vertebrate species are located within the Project area?

We recorded 442 individual birds of 19 different avian species, representing 15 separate families were recorded during station counts and incidentally to the station counts.

We also recorded three mammalian species while on the site, all of which are considered alien to the Hawaiian Islands.

33. Of the terrestrial vertebrate species encountered, did you find foreign species that were introduced or which are native?

We recorded both native and alien species present on the property.

34. If so, what are they?

We detected 19 avian species, 15 of which are considered to be alien to the Hawaiian Islands and 4 which are native to the islands. As previously stated, all three of the mammalian species detected are alien.

The 4 native bird species detected were, Black-crowned Night-Heron (*Nycticorax nycticorax hoactli*), Pacific Golden-Plover (*Pluvialis fulva*), Black-necked Stilt (*Himantopus mexicanus knudseni*), and Ruddy Turnstone (*Arenaria interpres*). The Black-necked Stilt is a resident endangered endemic sub-species. The Black-crowned Night-Heron is an indigenous resident species, and the Pacific Golden-Plover and Ruddy Turnstone are both indigenous migratory waterbird species.

35. ***Of the total number of terrestrial vertebrate species that were encountered, did you find any that are considered threatened or endangered by either the State of Hawaii or the Federal Government?***

The sole listed species recorded during this survey was the Hawaiian endemic sub-species of the Black-necked Stilt.

36. ***Would seasonal differences affect the findings of your survey with respect to endangered or threatened species?***

The survey we conducted on this property was conducted at a time of the year when one would expect the maximum number of migratory shorebirds and waterfowl, and during the height of the stilt breeding season.

In Hawaii, and especially in the lowlands in the Kapolei area, the primary difference in the results of bird surveys conducted during the early spring, and ones conducted in mid-to-late summer is that migratory shorebirds and waterfowl, as well as nesting Hawaiian Stilts are not likely to be detected on surveys conducted in the summer months, as the migrants are on their breeding grounds in the high Arctic and northern Asia at that time of the year, and resident waterbirds such as Hawaiian Stilts do not as a rule nest during the summer months.

37. ***Based upon your findings, will the reclassification and development of the Project area have an adverse impact on endangered or threatened terrestrial vertebrate species?***

No, in my opinion, the reclassification and development of the subject property will not result in deleterious impacts to any avian or mammalian species currently listed as threatened, endangered or that is currently proposed for listing under either federal or State of Hawaii endangered species statutes.

The site is a highly modified and degraded heavy mining area – ongoing heavy disturbance within the Project site is significant and occurs on a regular basis. The man-made ephemeral standing coral settling ponds do not represent stable or consistent nesting habitat for Hawaiian Stilts or any other listed waterbird species.

Though Hawaiian Stilts do use foraging and loafing resources within the subject property on an incidental basis, I am unaware that stilt have ever attempted to nest on the subject property – and frankly it is not a safe or conducive site on which I would want to see stilts attempt to nest.

I have visited the coral settling ponds on at least 9 occasions over the past two and a half years, either in conjunction with this Project, or the Hawaiian Electric Generating Station and Transmission Additions Project. Furthermore, since questions were raised regarding the potential of nesting stilts on the site I have also visited the site on an additional four occasions the last of which was on

Monday January 15, 2007. Site visits were made in August, 2005; December 2005; May 2006; September 2006 and in January 2007. At no time did I find nesting stilt on the property, and given the industrial nature of the site, and where the seasonally available water is, it is hard to imagine missing an active nest if one was present, since stilt defend their nest sites vigorously, and the vegetation present provides minimal cover.